FAX : 0532-2400149

REGISTERED / AD

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**38,MG Marg Civil Lines,Old Red Building,Allahabad-211001**
**Regional Branch, Allahabad**

Dated: **10/08/2016**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/70634/2016-EX[DB]** dated **04/08/2016**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

**Asstt. Registrar**

| | Application | Appeal | Name and Address of Appellant |
|---|---|---|---|
| 1 | E/MISC/70033/2016 | E/70132/2016 | **FLAKTWOODS ACS INDIA PVT LTD**<br>PLOT NO. 3B, ECOTECH-II, UDYOG NAGAR,GREATER NOIDA<br>GAUTAM BUDH NAGAR<br>U.P.<br>201306 |
| | | | Name and Address of Respondent |
| 2 | | | C E & ST-Noida Ii<br>OFFICE OF THE COMMISSIONER<br>CENTRAL EXCISEHOTEL FORMULE 1.<br>WEGMANS BUSINESS PARK, KP-III,<br>GREATER NOIDA<br>GOTAM BUDH NAGAR,U.P.- |

**Copy To**

3Advocate(s) / Consultant(s):

RAJESH CHIBBER
FA-9, KAVI NAGAR,
GHAZIABAD,UP

4 Additional Party's Name & Address :
5 Bar Association, CESTAT, Allahabad
6 Director Publications, Customs, Excise. I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A. Iscon Mall, Satellite Road, Ahmedabad-15
11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38
14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Guard File

**Asstt. Registrar**

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,**
**REGIONAL BENCH : ALLAHABAD**

**Appeal No.E/70132/2016-EX[DB]**

Arising out of O/O No.08-10/COMM/NOIDA-II/2015-16 dated 30.10.2015 passed by Commr. of Central Excise, Noida-II.

**For approval and signature:**

**HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)**
**HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)**

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

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M/s Flaktwoods Acs (India) Pvt. Ltd. ...APPELLANT(S)

***VERSUS***

Commissioner of Central Excise & S.T., Noida-ii ...RESPONDENT (S)

**APPEARANCE:**

Shri Rajesh Chibber, Advocate for the Appellant (s)
Shri Rajeev Ranjan, Jt. Commissioner, (A.R.) for the Department

**CORAM:**

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 04.08.2016

FINAL ORDER NO. - 70634/2016

CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

**Per Mr. Anil Choudhary :**

The appellant, a manufacturer of M/s Air Treatment/Air Handling Units (AHU), Ventilation Unit and Parts thereof, is in appeal against Order-in-Original No.08-10/COMM/NOIDA-II/2015-16 dated 30.10.2015, passed by the Commissioner of Central Excise, Noida-II, by which the duty have been demanded on the freight incurred in transportation of goods manufactured, post clearance from the factory to the place or site of the buyers.

2. The brief facts are that the show-cause-notice dated 08.08.2014, was issued for the extended period from 2009-10 to 2013-14, alleging that the Revenue Audit pointed out that as per the relevant purchase order in invoices, the appellant have supplied their goods namely, Air Handling Unit, in complete knock-down condition to the premises of buyer. Appellants have assembled the AHU, and after that they have installed the Unit at the buyers premises and the work of installation is outsourced by the appellant and Cenvat Credit of the service tax paid by the third party on installation service at the premises of the buyers, has been taken in the Cenvat account and service tax liability discharged. Accordingly, it appeared to Revenue that the act of manufacturing gets completed at the premises of the buyer as assembling and installation of Air Handling Units (AHU) is being done at the premises of the buyers. Further, in this way, ownership of the subject goods remained with the appellant till delivery and installation of the AHU at the buyer's premises.

Accordingly, the place of removal of goods in terms of Section 4(1) of the Act, is the buyer's premises. Further, on scrutiny of Ledgers and invoices of the appellant, it was found that the appellant has been discharging freight on the AHU from their unit upto the premises of buyers, but they are not including the freight in the assessable value of AHU. Accordingly, it appeared to Revenue that the AHU manufactured and cleared (goods) by the appellant, will be chargeable, by valuation under Section 4(1)(b) instead of Section 4(1)(a) of the Act. Two more show-cause notices were issued dated 20.08.2014 for the period August, 2013 to March, 2014 and dated 20.04.2015 for the period of April, 2014 to December, 2014.

3. The issue in this appeal is whether under the facts and circumstances, freight for transportation of goods from the factory of the appellant to the premises of the buyers, is includible in the assessable value or not.

4. The facts, which are not in dispute, is that the appellant manufactured most of the components of the AHU. Some components are bought and brought in the factory and used in the manufacture of AHU, which is cleared on payment of duty. The learned Counsel for the appellants has taken us through some of the purchase orders, wherein one purchase order of Gland Pharma Ltd. dated 06.12.2012, the terms of delivery is mentioned as F.O.R. at their site. Further, installation is free of cost. In the case of Purchase Order dated 27.03.2012 of Nestle

in the terms and conditions, it is mentioned "all materials will be subject to the buyer's inspection and approval before acceptance. The Supplier hereby warrants the merchandise and workmanship of material delivered and work performed". In another purchase order of Cipla Ltd. 06.09.2012, in payment terms, it is mentioned 10% advance BG, 80% against proforma invoice after inspection before dispatch, 10% after delivery and subject to performance BG for one year. Further, in the delivery terms, it is mentioned freight at actual. Similarly, in the purchase order of NTPC Ltd., under the column of inspection, it is mentioned NTPC shall collect the material from vendor's premises and freight charges, it is mentioned will be borne by NTPC and further providing for inspection at source-Dadari (i.e. workshop of the appellant). Accordingly, learned Counsel, Mr. Rajesh Chibber urged that in almost all clearances made, the goods manufactured, are subject to pre delivery inspection, at which stage the goods become ascertained on inspection to a particular buyer and at that stage, the transfer of title takes place. The Ld. Commissioner have erred in concluding that the transfer of title takes place, after the goods are delivered at premises of buyers. Accordingly, the place of removal is the factory Gate and not the premises of the buyers. It is further evident from the copy of sample invoices, that freight have been charged separately in the invoices. The counsel is also relying on the ruling of the Hon'ble Supreme Court in the case of C.C.E. Mumbai Vs. Official Liquidator for Brimco Plastic Machinery Pvt.

Ltd., reported at 2015(09) LCX 0057, wherein also the Hon'ble Supreme Court in the case of the assessee, manufacturing and clearing Plastic Machinery and installing and commissioning it at the factory sites of their customers, and most of the components of the machineries were manufactured by them, including some components, bought from market and brought to their factory. All such components were taken in unassembled form for the purpose of convenient transportation to the site of their customers, where such machinery is assembled and installed. The assessee has been supplying the machinery in unassembled form and was assembling and not installing at buyer's place on contract basis and recovering the contract price by raising invoice. The Revenue wanted to add certain cost incurred towards installation, erection, etc. for arriving at the transaction value. The apex Court held that the Tribunal was correct in holding that the expenses of installation is not includible in the transaction value, as it is obvious conclusion on reading of Section 4 of the Act. As per which, the transaction value is to be arrived at the time of clearance of the goods at the factory gate. All the expenses which are incurred post clearance (that too, after the supply of equipment) in respect of installation, etc., could not have been taken into consideration in the facts of the case. The learned Counsel urges that the facts are similar in the two cases and accordingly, prays for allowing the appeal with consequential benefits.

5. The Learned A.R. for Revenue has relied on the impugned order and the findings of the Ld. Commissioner.

6. Having carefully considered the rival contentions, we hold that it is evident that the goods have been delivered to the buyer at the factory gate as is evident from the invoice and the purchase Orders by reading together. In the invoices, the appellants have charged sales tax and have also reflected the freight separately in most of the cases. Further, it is an admitted fact that in most of the cases of clearance, the goods after manufacturing in the plant of the appellant, are subject to pre delivery inspection by the buyer and are ascertained in favour of the particular buyer before the delivery. Accordingly, we hold that the transfer of ownership takes place at the factory gate when the goods are delivered. Accordingly, we hold that the learned Commissioner have erred in holding that the goods manufactured and cleared by the appellant, shall not be valued under Section 4(1)(a) but under Section 4(1)(b). We hold that the valuation shall be done in the appellants case only under Section 4(1)(a), as explained by Hon'ble Supreme Court in the aforementioned case (supra).

7. Accordingly, we allow the appeal with consequential benefits and set aside the impugned order.

Sd/-
**(ANIL G. SHAKKARWAR)**
**MEMBER (TECHNICAL)**

Sd/-
**(ANIL CHOUDHARY)**
**MEMBER (JUDICIAL)**

mishra

प्रमाणित प्रति / Certified True Copy
30.8
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001